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Practice Guide: ADA Website Accessibility Litigation

The last few years have seen an explosion of putative class actions under the Americans with Disabilities Act, 42 U.S.C. § 12102 (the "ADA") and parallel New York laws alleging discrimination against the visually impaired from inaccessible websites. In the Complaint, the blind or otherwise visually impaired plaintiff alleges that he or she attempted to access the defendant's website either to make purchases and/or to obtain information about the defendant's physical locations but was unable to do so because the website is incompatible with the screen reading software utilized by the blind to navigate the web. These lawsuits, which plaintiff's firms are filing by the hundreds against a broad range of commercial enterprises, seek injunctive relief requiring the defendant to remediate its website in accordance with the Web Content Accessibility Guidelines ("WCAG") and, of course, attorneys' fees to plaintiff's counsel.

When facing a Federal or New York ADA website accessibility lawsuit, clients have two principal questions: "Is there a way to get this case dismissed?" and "How can I resolve this case as quickly and cheaply as possible?" While every case is different and should be analyzed by an experienced lawyer, here are some tips and strategies to consider:

- **Confirm the Complaint is Accurate.** Because plaintiff's firms operate on volume, their complaints are typically cut and pasted from prior lawsuits. They can be rife with errors, including allegations that are inapplicable to your company or simply untrue. If the allegations are wrong, this can be a basis to dismiss the complaint or force plaintiff's attorney to expend some effort in revising the complaint. In addition, these firms use software to test website compliance, but many use the free version, which may not produce accurate results. If you believe your website is already ADA compliant, have your web provider run diagnostics that you can use to seek dismissal of the complaint.
- **But Don't Expect to Win a Motion to Dismiss on Legal Grounds.** The New York federal courts have issued several plaintiff-friendly decisions in response to motions to dismiss on either statutory interpretation or due process grounds. Thus, the courts have held that requiring a defendant to follow the WCAG 2.0 guidelines does not violate due process and that websites are places of public accommodation within the meaning of the ADA and so must be accessible to the disabled. Unfortunately, this means defendants have limited options in attempting to dismiss an ADA case pre-discovery.
- **Decide Whether You Want a Lower Settlement Payment or a Longer Remediation Period.** If you decide an early settlement is advisable, consider which is more important to you: how much you will pay in attorneys' fees as a settlement or how long you will take to revamp the website. These two issues are often inversely proportionate in negotiating a settlement agreement.
- **Fix Your Website.** The only way to protect yourself completely is to bring your website into reasonable compliance with the WCAG 2.0 guidelines. Speak to your website provider or IT specialist to determine what is involved and what it will cost and then implement a plan to make the website accessible.

At Yankwitt LLP, we have successfully resolved numerous ADA website accessibility lawsuits on behalf of our clients through early and favorable settlements. If you would like more information about ADA website accessibility litigation or our practice, please call us at [914-686-1500](tel:914-686-1500). One of our New York attorneys with ADA experience will return your call promptly.